

1 COOLEY LLP  
2 MICHAEL G. RHODES (116127) (rhodesmg@cooley.com)  
3 JEFFREY M. GUTKIN (216083) (jgutkin@cooley.com)  
4 KYLE C. WONG (224021) (kwong@cooley.com)  
5 101 California Street  
5th Floor  
6 San Francisco, CA 94111-5800  
7 Telephone: (415) 693-2000  
8 Facsimile: (415) 693-2222

9 Attorneys for Defendant  
10 GOOGLE LLC

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

15 ADTRADER, INC., CLASSIC AND FOOD  
16 EOOD, LML CONSULT LTD., AD  
17 CRUNCH LTD., FRESH BREAK LTD., and  
18 SPECIALIZED COLLECTIONS BUREAU,  
19 INC.,

Case No. 5:17-CV-7082-BLF

20 **DEFENDANT GOOGLE LLC'S RESPONSES  
21 TO PLAINTIFFS' SECOND AMENDED  
22 CLASS ACTION COMPLAINT**

23 Plaintiff,

24 v.

25 GOOGLE LLC,

26 Defendant.

27  
28 Defendant Google LLC (“Google”), by and through its undersigned counsel, hereby responds  
to Plaintiffs’ Second Amended Class Action Complaint (“SAC”) as follows:

1. In response to paragraph 1, Google admits that it operates the online advertising service  
currently known as Google Ad Manager, which was formally called DoubleClick Ad Exchange or  
AdX. Google admits that AdX offers services both for website publishers selling advertising space  
on their sites and advertisers seeking to buy advertising space on the Internet. Google admits that web  
publishers are generally paid a portion of the revenues Google receives for ads displayed on the  
publisher’s websites. Google admits that its total global revenue from online advertising generally  
amounts to billions of dollars per year. The remainder of paragraph 1 consists of Plaintiffs’ argument

29  
30 **DEFENDANT GOOGLE LLC'S RESPONSES TO  
31 ADTRADER, INC.'S SECOND AMENDED CLASS ACTION  
32 COMPLAINT - CASE NO. 5:17-CV-7082-BLF**

1 and characterization of their allegations and does not require a response, to the extent a response is  
 2 required, Google denies all the allegations therein.

3       2. In response to paragraph 2, Google admits that Plaintiff AdTrader used the publisher  
 4 side of Google's AdX service for several years. Google admits that it terminated Plaintiff AdTrader's  
 5 publisher side AdX account due to AdTrader's violations of Google's policies and made no further  
 6 payments to AdTrader for its AdX publisher account after the termination. Google denies all other  
 7 allegations in the remainder of paragraph 2.

8       3. In response to paragraph 3, Google's responses to written discovery speak for  
 9 themselves and do not require a response. The remainder of paragraph 3 consists of Plaintiffs'  
 10 argument, legal conclusions, and characterization of their allegations and does not require a response,  
 11 to the extent a response is required, Google denies all the allegations therein.

12       4. In response to paragraph 4, Google admits that it operates the online advertising service  
 13 formally known as DoubleClick Bid Manager or DBM. Google admits that advertisers may use DBM  
 14 to purchase advertising space on AdX and other advertising networks. Google admits that it operates  
 15 the online advertising platform known as AdSense.

16       5. In response to paragraph 5, Google admits that one of its employees used the quoted  
 17 words in 2017 but notes that Plaintiffs have broken up the statement to characterize it in a specific  
 18 manner, which does not require a response. While Google notes that the SAC is ambiguous as to what  
 19 constitutes a refund or credit for invalid activity, Google denies that it did not provide any refunds or  
 20 credits for invalid ad activity it detected on DBM until recently. Google lacks sufficient knowledge  
 21 or information to admit or deny what expectations DBM advertisers had, and on that basis denies the  
 22 allegation. The remainder of paragraph 5 consists of Plaintiffs' argument, legal conclusions, and  
 23 characterization of their allegations and does not require a response; to the extent a response is required  
 24 Google denies all the allegations therein.

25       6. Paragraph 6 consists entirely of Plaintiffs' legal argument and characterization of their  
 26 allegations and does not require a response; to the extent a response is required, Google denies all the  
 27 allegations therein.

## PARTIES

7. In response to paragraph 7, Google admits that Plaintiff AdTrader has contracted with Google under the names AdTrader and AdTrad'r. Google lacks sufficient information to admit or deny the remaining allegations of paragraph 7 and on that basis denies all remaining allegations in paragraph 7.

8. In response to paragraph 8, Google lacks sufficient information to admit or deny all the allegations of paragraph 8 and on that basis denies all allegations in paragraph 8.

9. In response to paragraph 9, Google lacks sufficient information to admit or deny all the allegations of paragraph 9 and on that basis denies all allegations in paragraph 9.

10. In response to paragraph 10, Google lacks sufficient information to admit or deny all the allegations of paragraph 10 and on that basis denies all allegations in paragraph 10.

11. In response to paragraph 11, Google lacks sufficient information to admit or deny all the allegations of paragraph 11 and on that basis denies all allegations in paragraph 11.

12. In response to paragraph 12, Google lacks sufficient information to admit or deny all the allegations of paragraph 12 and on that basis denies all allegations in paragraph 12.

13. In response to paragraph 13, Google admits that it is a Delaware limited liability company with its principle place of business in California and was formally known as Google Inc. at the time of its first contract with Plaintiff AdTrader.

## JURISDICTIONAL STATEMENT

14. In response to paragraph 14, Google does not contest diversity jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) at this time, but reserves all rights, defenses, and arguments as the case develops. Google lacks knowledge or information sufficient to admit or deny the remaining allegations in this paragraph, and on that basis denies these allegations.

15. In response to paragraph 15, Google does not contest that this Court has personal jurisdiction over it in this action. Google admits that it is authorized to do business in California and, Google admits that its contracts with Plaintiffs AdTrader and Specialized Collections Bureau provide that the parties consent to jurisdiction in this Court.

16. In response to paragraph 16, Google does not contest venue in this Court and admits that it resides in and regularly conducts business in this federal judicial district. Google admits that its contracts with Plaintiffs AdTrader and Specialized Collections Bureau have forum selection clauses requiring all disputes be brought in the state or federal courts of Santa Clara County, California.

## INTRADISTRICT ASSIGNMENT

17. In response to paragraph 17, Google does not contest assignment to this Court. Google admits that its headquarters is in Mountain View, California.

## FACTUAL ALLEGATIONS

## Google's Advertising Business

18. In response to paragraph 18, Google admits that it receives advertising revenues from ads placed both on webpages owned by Google and webpages that belong to third parties. Google admits that it sometimes refers to these websites as “Google Network Members” (sometimes abbreviated as “GNM”). Google lacks sufficient knowledge or information to admit or deny whether it is the largest advertising business in the world and on that basis denies those allegations. The remainder of paragraph 18 consists of Plaintiffs’ argument and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

19. In response to paragraph 19, Google admits that it contracts with websites owned by third parties to display advertising space that Google sells to advertisers. Google admits that it sometimes refers to these websites as “Google Network Members.” Google admits that, consistent with its contracts and policies, Google pays Google Network Members a portion of the revenues Google receives from advertisers who purchase ads on the Google Network Member’s website.

20. In response to paragraph 20, Google admits that it offers different pricing models to advertisers, including paying by the click or by impression.

21. In response to paragraph 21, Google admits that it generally tracks the revenue associated with advertisers' purchases of online ads on GNM websites. The remainder of paragraph 21 consists of Plaintiffs' argument and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

22. In response to paragraph 22, Google admits that in calendar year 2017 it received over \$17 billion in advertising revenue based on ad sales on Google Network Members' webpages.

## Google's DoubleClick Ad Exchange (AdX)

23. In response to paragraph 23, Google admits that it offers services both for publishers selling advertising space and advertisers seeking to buy advertising space. Google admits that third party publishers who participate in these services are generally paid part of the revenue Google receives for ads displayed on their websites. Google admits that the service currently known as Google Ad Manager, formally known as AdX, is one such service.

24. In response to paragraph 24, Google admits that it has described AdX using the quoted language. Google admits that AdX allows publishers to sell and advertisers to buy advertising space from multiple sources on a single platform.

25. In response to paragraph 25, Google admits that publishers can sell ad space directly through AdX. Google admits that publishers may also contract with third parties who can sell advertising space on their behalf. Google admits that it sometimes refers to these sellers who use their AdX accounts to sell ad space on behalf of third parties as Network Partner Managers or NPMs. The remainder of paragraph 25 consists of Plaintiffs' argument and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

26. In response to paragraph 26, Google admits that advertisers may directly purchase ad space through AdX. Google admits that advertisers may also contract with advertising agencies to buy advertising space through AdX on their behalf. Google admits that it sometimes refers to advertising agencies as advertising networks. The remainder of paragraph 26 consists of Plaintiffs' argument and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

27. In response to paragraph 27, Google admits that advertisers may purchase advertising space on AdX and AdSense publisher websites through Google's AdWords advertising service. Google admits that the default settings for Google's Advertising services allow ads to be displayed on AdX. Google denies all other allegations in the remainder of paragraph 27.

28. In response to paragraph 28, Google lacks sufficient information to admit or deny the all the allegations of paragraph 28 and on that basis denies.

## Google's DoubleClick Bid Manager (DBM)

29. In response to paragraph 29, Google admits that advertisers can purchase online ads on AdX through a DSP.

30. In response to paragraph 30, Google admits that a DSP is a program or service that allows advertisers to access multiple online advertising services.

31. In response to paragraph 31, Google admits that it owns and operates the DSP currently known as DV 360, which was formally called DBM. Google admits that DBM matches advertisers seeking to buy advertising space with publishers seeking to sell advertising space. Google admits that it sends advertisers who use DBM invoices for their ad expenditures after the relevant billing period has concluded based on the pricing model for that specific advertiser. Google admits that its contracts with these advertisers generally call for them to promptly pay Google for the amounts invoiced. Google admits that it generally passes the bulk of the revenues it receives on to the publisher-side ad exchange and keeps the remainder. Google lacks sufficient knowledge or information to admit or deny the remaining allegations of paragraph 31 and on that basis denies all remaining allegations in paragraph 31.

32. In response to paragraph 32, Google admits that advertisers can buy advertising space from an AdX or AdSense publisher through DBM. Google denies that the majority of ad buys made on DBM are placed on AdX publisher websites. Google lacks sufficient knowledge or information to admit or deny whether the CEO of AppNexus made the statement attributed to them in paragraph 32 and on that basis denies the allegation. Google lacks sufficient knowledge or information to admit or deny what is well known throughout the advertising industry and what topics are openly discussed between advertising executives and on that basis denies the allegation

33. In response to paragraph 33, Google admits that when an advertiser purchases an ad through DBM that is placed on an AdSense or AdX publisher website, Google will generally receive payment from the advertiser and make a payment to the publisher. The remainder of paragraph 33 consists of Plaintiffs' argument and characterization of their allegations and does not require a

1 response; to the extent a response is required, Google denies all the allegations therein.

2 **Google's Contracts with AdX Publishers**

3 34. In response to paragraph 34, Google admits that publishers must sign a contract  
 4 sometimes known as the AdX Publisher Agreement before participating in AdX and that Exhibit 1 to  
 5 the SAC appears to be a copy of the AdX Publisher Agreement signed by Plaintiff AdTrader on June  
 6 19, 2014.

7 35. In response to paragraph 35, Google admits that the paragraph provides a partial quote  
 8 of section 8.2 of the AdX Publisher Agreement. The remainder of paragraph 35 consists of  
 9 Plaintiffs' argument, legal conclusions, and characterization of their allegations and does not require  
 10 a response; to the extent a response is required, Google denies all the allegations therein.

11 36. In response to paragraph 36, Google admits that the paragraph provides a partial quote  
 12 of section 13.2 of the AdX Publisher Agreement. The remainder of paragraph 36 consists of Plaintiffs'  
 13 argument, legal conclusions, and characterization of their allegations and does not require a response;  
 14 to the extent a response is required, Google denies all the allegations therein.

15 37. Paragraph 37 consists entirely of Plaintiffs' argument, legal conclusions, and  
 16 characterization of their allegations and does not require a response; to the extent a response is  
 17 required, Google denies all the allegations therein.

18 **Google's Contracts with Advertisers**

19 38. In response to Paragraph 38, Google admits that advertisers who wish to use the AdX  
 20 service must sign a contract sometimes called the DoubleClick Ad Exchange Master Service  
 21 Agreement. Google admits that Exhibit 2 appears to be a copy of the DoubleClick Ad Exchange  
 22 Master Service Agreement signed by Plaintiff AdTrader on April 1, 2016. Google admits that after  
 23 signing this agreement advertisers are generally given access to the advertiser side AdX platform  
 24 sometimes known as AdX Buyer.

25 39. In response to paragraph 39, Google admits that advertisers who wish to use the DBM  
 26 service must sign a contract sometimes called the DBM Agreement. Google admits that Exhibit 3  
 27 appears to be a copy of the DBM Agreement signed by Plaintiff AdTrader on March 11, 2016. Google  
 28 denies that an advertiser may not purchase ad space on AdX publisher websites through DBM unless

1 they have signed contracts for both DBM and AdX. Google lacks sufficient information to admit or  
 2 deny whether the invoices referenced in paragraph 39 were for purchases AdTrader made through  
 3 DBM or AdX and on that basis denies the allegation. The remainder of paragraph 39 consists of  
 4 Plaintiffs' argument and characterization of their allegations and does not require a response; to the  
 5 extent a response is required, Google denies all the allegations therein.

6 40. In response to paragraph 40, Google admits that advertisers who wish to use the  
 7 AdWords service must agree to a contract sometimes called the Advertising Program Terms. Google  
 8 admits that Exhibit 4 appears to be a copy of the AdWords Agreement agreed to by Plaintiff AdTrader  
 9 on February 21, 2013.

10 **Google's Repeated Promises to Issue Refunds or Credits to Advertisers for Invalid Activity**

11 41. In response to paragraph 41, Google admits that certain of its webpages state that  
 12 Google attempts to detect fraudulent or otherwise invalid ad traffic and that Google issues or attempts  
 13 to issue credits or refunds to advertisers under certain circumstances. Google denies all other  
 14 allegations in the remainder of paragraph 41.

15 42. In response to paragraph 42, Google admits that it has posted the quoted statement on  
 16 its webpages for at least some portion of the time period at issue in this complaint. Google admits that  
 17 Exhibit 7 appears to be a printout of one of Google's webpages containing that statement.

18 43. In response to paragraph 43, Google admits that it has posted the quoted statement on  
 19 its webpages for at least some portion of the time period at issue in this complaint. Google admits that  
 20 Exhibit 8 appears to be a printout of one of Google's webpages containing that statement.

21 44. In response to paragraph 44, Google admits that it has posted the quoted statement on  
 22 its webpages since at least late 2017. Google admits that Exhibit 6 appears to be a printout of one of  
 23 Google's webpages containing that statement.

24 45. In response to paragraph 45, Google admits that it has posted the quoted statement on  
 25 its webpages for at least some portion of the time period at issue in this complaint. Google admits that  
 26 it attempts to detect invalid ad activity on all of its online advertising services. The remainder of  
 27 paragraph 45 consists of Plaintiffs' argument and characterization of their allegations and does not  
 28 require a response; to the extent a response is required, Google denies all the allegations therein.

## **Background on Plaintiffs and Their Use of AdX**

46. In response to paragraph 46, Google admits that Plaintiff AdTrader appears to have acted as both a purchaser and seller of online advertising space using Google's services. Google lacks sufficient knowledge or information to admit or deny the remaining allegations in this paragraph, and on that basis denies.

47. In response to paragraph 47, Google lacks sufficient knowledge or information to admit or deny the allegations regarding Plaintiff AdTrader, and on that basis denies.

48. In response to paragraph 48, Google lacks sufficient knowledge or information to admit or deny the allegations regarding Plaintiff AdTrader, and on that basis denies.

49. In response to paragraph 49, Google lacks sufficient knowledge or information to admit or deny the allegations regarding Plaintiff AdTrader, and on that basis denies.

50. In response to paragraph 50, Google denies that AdTrader's publisher clients complied with Google's policies. Google lacks sufficient knowledge or information to admit or deny the remaining allegations in paragraph 50, and on that basis denies all other allegations therein.

51. In response to paragraph 51, Google admits that AdTrader used Google's AdX publishing services for the last three years, but, to the extent Google understands the allegations, denies that it had "worked extensively" with AdTrader. Google lacks sufficient knowledge or information to admit or deny the remaining allegations in paragraph 51, and on that basis denies.

52. In response to paragraph 52, Google admits that its employees communicated with AdTrader employees through various channels. Google admits that these employees included Balint Torok, Rachad Saddi and Anthony Nakache. Google denies its employees reassured AdTrader that it and its publisher clients were in compliance with Google's policies. Google denies that Balint Torok referred other AdX publishers to AdTrader for help and advice. The remainder of paragraph 52 consists of Plaintiffs' arguments and characterization of their allegations and does not require a response; to the extent a response is required Google denies all of the allegations therein.

53. In response to paragraph 53, Google lacks sufficient knowledge or information to admit or deny the allegations regarding Plaintiff Classic, and on that basis denies.

1       54.    In response to paragraph 54, Google lacks sufficient knowledge or information to admit  
 2 or deny the allegations regarding Plaintiff LML, and on that basis denies.  
 3

4       55.    In response to paragraph 55, Google lacks sufficient knowledge or information to admit  
 5 or deny the allegations regarding Plaintiff Ad Crunch, and on that basis denies.  
 6

7       56.    In response to paragraph 56, Google lacks sufficient knowledge or information to admit  
 8 or deny the allegations regarding Plaintiff Fresh Break, and on that basis denies.  
 9

7       57.    In response to paragraph 55, Google admits that SCB used the AdWords advertising  
 8 service. Google lacks sufficient knowledge or information to admit or deny the remaining allegations  
 9 in this paragraph, and on that basis denies all remaining allegations.  
 10

**Google Initiates Direct Contact with DingIt, a Key Client of AdTrader.**

11      58.    In response to paragraph 58, Google lacks sufficient knowledge or information to admit  
 12 or deny the allegations regarding Plaintiff AdTrader and Dingit, and on that basis denies.  
 13

14      59.    In response to paragraph 59, Google lacks sufficient knowledge or information to admit  
 15 or deny the allegations regarding Plaintiff AdTrader and Dingit, and on that basis denies.  
 16

17      60.    In response to paragraph 60, Google admits that it had what appeared to be a copy of a  
 18 contract between AdTrader and DingIt since at least May 17, 2017. Google admits that its employees  
 19 discussed AdTrader's relationship with DingIt in early to mid-2017. Google admits that NPMs must  
 20 generally register new domains that they seek to sell advertising space on with Google. The remainder  
 21 of paragraph 60 consists of Plaintiffs' argument and characterization of their allegations and does not  
 22 require a response; to the extent a response is required, Google denies all the allegations therein.  
 23

24      61.    In response to paragraph 61, Google admits that Pavel Pimshin contacted AdTrader on  
 25 or about May 12, 2017. Google admits that Mr. Pimshin asked AdTrader to have DingIt contact  
 26 Google directly and requested that AdTrader provide a copy of its contract with DingIt. The allegation  
 27 regarding when Google "typically" works directly with a publisher is Plaintiffs' argument and  
 28 characterization of their allegations and no response is required; to the extent a response is required  
 Google denies the allegation. Google denies all remaining allegations in paragraph 61.  
 29

30      62.    In response to paragraph 62, Google admits that AdTrader connected a person who  
 31 appeared to be Adam Simmons to it via e-mail on May 15, 2017. Google admits that AdTrader had  
 32

1 supplied what appeared to be a copy of a contract between AdTrader and DingIt to Google. Google  
 2 admits that Adam Simmons corresponded with Pavel Pimshin directly via e-mail. The remainder of  
 3 this paragraph consists of Plaintiffs' arguments and characterization of their allegations and does not  
 4 require a response; to the extent a response is required Google denies all of the allegations therein.

5 **Google Suddenly Terminates AdTrader's AdX Account and Withholds Its Earnings.**

6 63. In response to paragraph 63, Google admits that it terminated AdTrader's AdX account  
 7 on May 19, 2017. Google admits that it sent an e-mail to AdTrader informing it of the termination  
 8 that is partially quoted in paragraph 63. Google admits that it made no further payments to AdTrader  
 9 as an AdX publisher after this date. The remainder of paragraph 63 consists of Plaintiffs' argument  
 10 and characterization of their allegations and does not require a response; to the extent a response is  
 11 required, Google denies all the allegations therein.

12 64. In response to paragraph 64, Google denies that AdTrader and its publisher clients  
 13 complied with the terms and policies of Google's services. Google denies that it had confirmed to  
 14 AdTrader that it and its publisher clients were in compliance with Google's terms and policies. Google  
 15 denies that it had held AdTrader as a model for compliance with Google's policies to other AdX  
 16 publishers. Google lacks sufficient knowledge or information to admit or deny the remaining  
 17 allegations in this paragraph, and on that basis denies all remaining allegations.

18 65. In response to paragraph 65, the content of Google's termination notice speaks for  
 19 itself. Apart from the content of that notice paragraph 65 consists entirely of Plaintiffs' legal argument  
 20 and characterization of their allegations and does not require a response; to the extent a response is  
 21 required, Google denies all the allegations therein.

22 66. In response to paragraph 66, Google lacks sufficient knowledge or information to admit  
 23 or deny the allegations in this paragraph, and on that basis denies.

24 **Google Refuses to Tell AdTrader Why It Terminated AdTrader's AdX Account and Withheld  
 25 Its Earnings, and Summarily Denies AdTrader's Appeal.**

26 67. In response to paragraph 67, Google admits that the quoted statement appears on one  
 27 of its webpages and that Exhibit 5 appears to be a printout of that page. Google denies that it did not  
 28 tell AdTrader the identities of specific publishers who had violated Google's policies. Google lacks

1 sufficient knowledge or information to admit or deny the remaining allegations in this paragraph, and  
 2 on that basis denies all other allegations.

3       68. In response to paragraph 68, Google admits that AdTrader submitted an appeal of its  
 4 termination. Google admits the appeal form is a standardized document but denies this allegation to  
 5 the extent Plaintiffs claim the appeal form provides no meaningful ability to furnish information.  
 6 Google denies that it did not tell AdTrader the identities of specific publishers who had violated  
 7 Google's policies. The remainder of paragraph 68 consists of Plaintiffs' argument and  
 8 characterization of their allegations and does not require a response; to the extent a response is  
 9 required, Google denies all the allegations therein.

10      69. In response to paragraph 69, Google admits that it rejected AdTrader's appeal. Google  
 11 admits that it used a form e-mail to inform AdTrader that its appeal had been rejected. Google denies  
 12 that nobody at Google reviewed AdTrader's appeal. Google denies that its appeal form conveys  
 13 minimal information. Google denies that it is only an illusion that it might re-instate a publisher after  
 14 termination.

15      70. In response to paragraph 70, Google admits that AdTrader sent additional messages to  
 16 Google personnel regarding its termination. Google admits that it did not provide additional  
 17 information to AdTrader after its appeal was denied. The remainder of paragraph 70 consists of  
 18 Plaintiffs' argument and characterization of their allegations and does not require a response; to the  
 19 extent a response is required, Google denies all the allegations therein.

20      71. In response to paragraph 71, Google denies that Mr. Torok gave the warning to  
 21 AdTrader alleged in paragraph 71. The remainder of paragraph 71 consists of Plaintiffs' argument  
 22 and characterization of their allegations and does not require a response; to the extent a response is  
 23 required, Google denies all the allegations therein.

24      72. In response to paragraph 72, Google denies that it entered into a direct relationship with  
 25 DingIt. Google lacks sufficient knowledge or information to admit or deny the remaining allegations  
 26 in this paragraph, and on that basis denies all remaining allegations.

1                   **Google Misrepresents That All of the Activity on AdTrader's AdX Account Was Invalid, and**  
 2                   **That All of Its Earnings Were Being Refunded to Advertisers.**

3                   73.        In response to paragraph 73, Google admits that Mr. Nakache spoke by phone with  
 4                   representatives from Plaintiff AdTrader on or about May 24, 2017. The remainder of paragraph 73  
 5                   consists of Plaintiffs' argument and characterization of their allegations and does not require a  
 6                   response; to the extent a response is required, Google denies all the allegations therein.

7                   74.        In response to paragraph 74, Google lacks sufficient knowledge or information to admit  
 8                   or deny whether the conversation was recorded and whether this paragraph lays out the words spoken  
 9                   in that conversation verbatim, and on that basis denies the allegations. The remainder of paragraph 74  
 10                  consists of Plaintiffs' argument and characterization of their allegations and does not require a  
 11                  response; to the extent a response is required, Google denies all the allegations therein.

12                  75.        In response to paragraph 75, Google's written discovery responses speak for  
 13                  themselves and do not require a response. The remainder of paragraph 75 consists of Plaintiffs'  
 14                  argument and characterization of their allegations and does not require a response; to the extent a  
 15                  response is required, Google denies all the allegations therein.

16                  76.        In response to paragraph 76, Google's written discovery responses speak for  
 17                  themselves and do not require a response. Google denies that it withheld \$476,622.69 in "accrued  
 18                  AdX earnings" from AdTrader. The remainder of paragraph 75 consists of Plaintiffs' argument and  
 19                  characterization of their allegations and does not require a response; to the extent a response is  
 20                  required, Google denies all the allegations therein.

21                  77.        In response to paragraph 77, Google lacks sufficient knowledge or information to admit  
 22                  or deny the allegations regarding AdTrader's ad activity, and on that basis denies.

23                  78.        In response to paragraph 78, Google lacks sufficient knowledge or information to admit  
 24                  or deny the allegations, and on that basis denies.

25                  79.        In response to paragraph 79, Google lacks sufficient knowledge or information to admit  
 26                  or deny the allegations, and on that basis denies.

27                  80.        In response to paragraph 80, Google lacks sufficient knowledge or information to admit

1 or deny the allegations, and on that basis denies.

2 81. In response to paragraph 81, Google admits that it determined that some ad activity on  
 3 AdTrader's publishing clients was invalid and did not pay AdTrader or its publishers for that invalid  
 4 activity. Google admits that it gives separate invoices for ad buys made through DBM and for  
 5 AdWords when an advertiser has an account under both services. Google lacks sufficient knowledge  
 6 or information to admit or deny the remaining allegations in paragraph 81, and on that basis denies all  
 7 remaining allegations.

8 82. In response to paragraph 82, Google admits that AdTrader's AdWords' invoices  
 9 occasionally reflected credits to its account for invalid activity. Google denies that it has not been  
 10 issuing refunds or credits for AdWords advertisements displayed on AdX publisher websites that it  
 11 subsequently determined to be invalid. The remainder of paragraph 82 consists of Plaintiffs' argument  
 12 and characterization of their allegations and does not require a response; to the extent a response is  
 13 required, Google denies all the allegations therein.

14 83. In response to paragraph 83, Google lacks sufficient knowledge or information to admit  
 15 or deny the allegations, and on that basis denies.

16 84. In response to paragraph 84, Google lacks sufficient knowledge or information to admit  
 17 or deny the allegations, and on that basis denies.

18 **Google Publicly Acknowledges That Its Promises to Refund Advertisers for Invalid Traffic  
 19 Were Not True with Respect to DBM.**

20 85. In response to paragraph 85, Google denies that it did not issue credits or refunds for  
 21 invalid ad activity. The remainder of paragraph 85 consists of Plaintiffs' argument and  
 22 characterization of their allegations and does not require a response; to the extent a response is  
 23 required, Google denies all the allegations therein.

24 86. In response to paragraph 86, Google admits that the Wall Street Journal published an  
 25 article in August, 2017 reporting on invalid online ad activity. The article in question speaks for itself  
 26 and the allegations regarding it do not require a response; to the extent a response is required, Google  
 27 denies the allegations. The remainder of paragraph 85 consists of Plaintiffs' argument and  
 28 characterization of their allegations and does not require a response; to the extent a response is

1 required, Google denies all the allegations therein.

2       87. In response to paragraph 87, Google denies it that used the words quoted in this  
 3 paragraph in response to the Wall Street Journal article. Google denies that “the vast majority of  
 4 advertisements purchased on DBM go to AdX publisher websites (or AdSense publisher websites).”  
 5 Google admits that it regularly withholds payments from publishers where it determines ad activity is  
 6 invalid. The remainder of paragraph 87 consists of Plaintiffs’ argument and characterization of their  
 7 allegations and does not require a response; to the extent a response is required, Google denies all the  
 8 allegations therein.

9       88. In response to paragraph 88, Google admits that on September 1, 2017 it announced  
 10 that it was adding an arbitration clause to the AdWords agreement. Google admits that the arbitration  
 11 clause can apply to disputes based on facts, which arose before September 1, 2017. Google admits  
 12 that the quoted language appeared in a prior version of its Advertising Program Terms. Google denies  
 13 that the changes were made in response to the August, 2017 Wall Street Journal article on invalid ad  
 14 activity. Google denies that Google had not been issuing refunds or credits for invalid ad activity  
 15 before the article was published. The remainder of paragraph 88 consists of Plaintiffs’ argument and  
 16 characterization of their allegations and does not require a response; to the extent a response is  
 17 required, Google denies all the allegations therein.

18       89. In response to paragraph 89, Google admits that one of its employees gave a statement  
 19 to The Register that included language quoted in this paragraph. Google denies that before filing this  
 20 lawsuit it was not issuing refunds or credits to DBM advertisers for invalid ad activity. The remainder  
 21 of paragraph 89 consists of Plaintiffs’ argument and characterization of their allegations and does not  
 22 require a response; to the extent a response is required, Google denies all the allegations therein.

### 23                   **CLASS ACTION ALLEGATIONS**

24       90. Paragraph 90 sets forth Plaintiffs’ proposed class definition prior to Plaintiffs’ motion  
 25 to amend their class definitions, filed on November 19, 2018 and does not require a response, to the  
 26 extent a response is required, Google denies all the allegations therein.

27       91. Paragraph 91 sets forth Plaintiffs’ proposed class definition prior to Plaintiffs’ motion  
 28 to amend their class definitions, filed on November 19, 2018 and does not require a response, to the

1 extent a response is required, Google denies all the allegations therein.

2 92. Paragraph 92 sets forth Plaintiffs' proposed class definition prior to Plaintiffs' motion  
 3 to amend their class definitions, filed on November 19, 2018 and does not require a response, to the  
 4 extent a response is required, Google denies all the allegations therein.

5 93. Paragraph 93 sets forth Plaintiffs' proposed class definition prior to Plaintiffs' motion  
 6 to amend their class definitions, filed on November 19, 2018 and does not require a response, to the  
 7 extent a response is required, Google denies all the allegations therein.

8 94. Paragraph 94 states Plaintiffs' position regarding amendment to the class definition and  
 9 does not require a response, to the extent a response is required, Google denies all the allegations  
 10 therein.

11 95. Paragraph 95 sets forth Plaintiffs' proposed class definition prior to Plaintiffs' motion  
 12 to amend their class definitions, filed on November 19, 2018 and does not require a response, to the  
 13 extent a response is required, Google denies all the allegations therein.

14 96. In response to paragraph 96, Google admits that Plaintiffs purport to bring this action  
 15 as a class action. Google denies that this action can be maintained as a class action under the Federal  
 16 Rules of Civil Procedure.

17 97. In response to paragraph 97, Google admits that the putative classes, as defined by  
 18 Plaintiffs would collectively include tens of thousands of advertisers at this time. The remainder of  
 19 paragraph 97 consists of Plaintiffs' legal arguments and conclusions and does not require a response,  
 20 to the extent a response is required, Google denies all the allegations therein.

21 98. Paragraph 98 consists entirely of Plaintiffs' legal arguments and conclusions and does  
 22 not require a response, to the extent a response is required Google denies all the allegations therein.

23 **ADTRADER'S INDIVIDUAL CLAIMS FOR RELIEF**

24 **FIRST CAUSE OF ACTION:**  
 25 **Breach of Contract (AdX Publisher Agreement)**  
 26 **by AdTrader Against Google**  
 27 **(Individual Claim)**

28 99. In response to paragraph 99, as Plaintiffs only reference other paragraphs of the SAC  
 in this paragraph, Google incorporates its responses to all the preceding paragraphs.

1           100. In response to paragraph 100, Google admits that AdTrader entered into the AdX  
 2 Publisher Agreement with Google. The remainder of paragraph 100 consists of Plaintiffs' legal  
 3 arguments and conclusions and does not require a response, to the extent a response is required Google  
 4 denies all the allegations therein.

5           101. In response to paragraph 101, Google admits that AdTrader's publisher clients  
 6 displayed advertisements. Google admits that it received revenue for advertisements displayed on  
 7 AdTrader's publisher websites. Google denies all remaining allegations in this paragraph.

8           **Google Breaches By Withholding AdTrader's Accrued Earnings**

9           102. Paragraph 102 consists entirely of Plaintiffs' legal arguments and conclusions and does  
 10 not require a response, to the extent a response is required Google denies all the allegations therein.

11          103. In response to paragraph 103, Google admits that this paragraph partially quotes  
 12 Section 8.2(a) of the AdX Publisher Agreement. The remainder of paragraph 103 consists of  
 13 Plaintiffs' legal conclusions and does not require a response, to the extent a response is required  
 14 Google denies all the allegations therein.

15          104. In response to paragraph 104, Google admits that this paragraph partially quotes  
 16 Section 8.2(b) of the AdX Publisher Agreement. The remainder of this paragraph consists of  
 17 Plaintiffs' legal arguments and conclusions and does not require a response, to the extent a response  
 18 is required Google denies all the allegations therein.

19          105. In response to paragraph 105, Google admits that this paragraph partially quotes  
 20 Google's responses to written discovery in this action, which speak for themselves and do not require  
 21 a response. The remainder of this paragraph consists of Plaintiffs' legal arguments and conclusions  
 22 and does not require a response, to the extent a response is required Google denies all the allegations  
 23 therein.

24          106. In response to paragraph 106, Google admits that this paragraph contains a partial  
 25 quotation from the AdX Publisher Agreement. The remainder of paragraph 106 consists of Plaintiffs'  
 26 legal arguments and conclusions and does not require a response, to the extent a response is required  
 27 Google denies all the allegations therein.

1       107. In response to paragraph 107, the termination notice Google sent AdTrader speaks for  
 2 itself and does not require a response. Google denies that Balint Torok made any of the statements  
 3 attributed to him in this paragraph. The remainder of paragraph 107 consists of Plaintiffs' argument  
 4 and characterization of their allegations and does not require a response; to the extent a response is  
 5 required, Google denies all the allegations therein.

6       108. In response to paragraph 108, Google denies that AdTrader's publisher clients  
 7 complied with Google's policies. Google denies that it confirmed to AdTrader that AdTrader and  
 8 AdTrader's publisher clients were in compliance with Google's policies.

9       109. In response to paragraph 109, Google lacks sufficient knowledge or information to  
 10 admit or deny the allegations regarding whether AdTrader's clients continued to sell ad space through  
 11 AdX, and on that basis denies the allegations. The remainder of paragraph 109 consists of Plaintiffs'  
 12 legal arguments and conclusions and does not require a response, to the extent a response is required  
 13 Google denies all the allegations therein

14       110. In response to paragraph 110, Google admits that this paragraph contains a partial  
 15 quotation from the e-mail Google sent to AdTrader informing it that its publisher account had been  
 16 terminated. Google admits that it uses the term "publisher" to refer to NPMs. Google lacks sufficient  
 17 knowledge or information to admit or deny the allegation that AdTrader's publisher clients remain  
 18 active on AdX and on that basis denies. The remainder of paragraph 110 consists of Plaintiffs' legal  
 19 arguments and characterization of their allegations and does not require a response; to the extent a  
 20 response is required, Google denies all the allegations therein.

21       111. In response to paragraph 111, Google lacks sufficient knowledge or information to  
 22 admit or deny the allegation regarding AdTrader's "Policy Violations" page and on that basis denies  
 23 the allegation. Google denies that it did not give AdTrader any prior notice that AdTrader had  
 24 breached the AdX Publisher Agreement.

25       112. Paragraph 112 consists entirely of Plaintiffs' legal arguments and characterization of  
 26 their allegations and does not require a response; to the extent a response is required, Google denies  
 27 all the allegations therein.

113. Paragraph 113 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

114. Paragraph 114 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

115. Paragraph 115 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

## Google Breaches By Improperly Terminating the AdX Account

116. Paragraph 116 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

117. In response to paragraph 117, Google admits that that this paragraph contains a partial quotation from the e-mail Google sent to AdTrader informing it that its publisher account had been terminated. Google admits that this paragraph contains a partial quotation from the AdX Publisher Agreement. The content of AdTrader's termination notice speaks for itself and does not require a response. The remainder of this paragraph consists of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

118. In response to paragraph 118, Google admits that this paragraph and subparagraphs contain partial quotations from the AdX Publisher Agreement. The content of AdTrader's termination notice speaks for itself and does not require a response. The remainder of this paragraph consists of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

119. Paragraph 119 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

120. Paragraph 120 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

**SECOND CAUSE OF ACTION:**  
**Breach of the Implied Covenant of Good Faith and Fair Dealing**  
**(AdX Publisher Agreement)**  
**by AdTrader against Google**  
**(Individual Claim)**

121. In response to paragraph 121, Plaintiffs reference paragraphs of the SAC in this paragraph, Google incorporates its responses to all the preceding paragraphs. The remainder of this paragraph pertains to Plaintiff AdTrader's individual cause of action for breach of the implied covenant of good faith and fair dealing which was dismissed with prejudice by the Court in its April 22 Order, such that no response is required to all allegations in this cause of action; to the extent a response is required, Google denies all allegations.

122. Paragraph 122 pertains to Plaintiff AdTrader's individual cause of action for breach of the implied covenant of good faith and fair dealing which was dismissed with prejudice by the Court in its April 22 Order, such that no response is required to all allegations in this cause of action; to the extent a response is required, Google denies all allegations.

123. Paragraph 123 pertains to Plaintiff AdTrader's individual cause of action for breach of the implied covenant of good faith and fair dealing which was dismissed with prejudice by the Court in its April 22 Order, such that no response is required to all allegations in this cause of action; to the extent a response is required, Google denies all allegations..

124. Paragraph 124 pertains to Plaintiff AdTrader's individual cause of action for breach of the implied covenant of good faith and fair dealing which was dismissed with prejudice by the Court in its April 22 Order, such that no response is required to all allegations in this cause of action; to the extent a response is required, Google denies all allegations..

125. Paragraph 125 pertains to Plaintiff AdTrader's individual cause of action for breach of the implied covenant of good faith and fair dealing which was dismissed with prejudice by the Court in its April 22 Order, such that no response is required to all allegations in this cause of action; to the extent a response is required, Google denies all allegations..

**THIRD CAUSE OF ACTION:**  
Intentional Interference with Contract  
by AdTrader against Google  
(Individual Claim)

126. In response to paragraph 126, Plaintiffs only reference paragraphs of the SAC in this paragraph, Google incorporates its responses to all the preceding paragraphs.

127. In response to paragraph 127, Google admits that it knew that AdTrader had a contractual relationship with DingIt to sell advertising space on Google's services since at least May 17, 2017. Google lacks sufficient knowledge or information to admit or deny the remaining allegations in paragraph 127 and on that basis denies.

128. In response to paragraph 128, Google lacks sufficient information to admit or deny the allegation that AdTrader was unable to remit earnings it owed to DingIt and on that basis denies. The remainder of paragraph 128 consists of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

129. In response to paragraph 129, Google lacks sufficient information to admit or deny whether AdTrader could perform its contractual relationship with DingIt. The remainder of paragraph 129 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

130. In response to paragraph 130, Google admits that it had a copy of AdTrader's contract with DingIt. Google admits that it has worked for years with NPMs other than AdTrader and that it is sometimes familiar with the business model of NPMs using its services. The remainder of paragraph 130 consists of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

131. Google lacks sufficient information to admit or deny the allegations about DingIt's services. The remainder of paragraph 131 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

132. In response to paragraph 132, Google lacks sufficient knowledge or information to

1 admit or deny the allegations regarding the revenues AdTrader expected to receive from DingIt, and  
 2 on that basis denies. The remainder of paragraph 132 consists entirely of Plaintiffs' legal arguments  
 3 and characterization of their allegations and does not require a response; to the extent a response is  
 4 required, Google denies all the allegations therein.

5 133. In response to paragraph 133, Google lacks sufficient knowledge or information to  
 6 admit or deny the allegations regarding AdTrader's relationship with Dubizzle FZ LLC, and on that  
 7 basis denies.

8 134. In response to paragraph 133, Google lacks sufficient knowledge or information to  
 9 admit or deny the allegations regarding AdTrader's relationship with Dubizzle FZ LLC, and on that  
 10 basis denies.

11 135. In response to paragraph 135, Google denies that it was aware of AdTrader's  
 12 contractual relationship with Dubizzle.

13 136. In response to paragraph 136, Google lacks sufficient knowledge or information to  
 14 admit or deny the allegations regarding AdTrader's relationship with Dubizzle FZ LLC, and on that  
 15 basis denies. The remainder of paragraph 136 consists entirely of Plaintiffs' legal arguments and  
 16 characterization of their allegations and does not require a response; to the extent a response is  
 17 required, Google denies all the allegations therein.

18 137. In response to paragraph 137, Google lacks sufficient knowledge or information to  
 19 admit or deny the allegations regarding AdTrader's relationship with Dir.bg Group, and on that basis  
 20 denies.

21 138. In response to paragraph 138, Google lacks sufficient knowledge or information to  
 22 admit or deny the allegations regarding AdTrader's relationship with Dir.bg Group, and on that basis  
 23 denies.

24 139. In response to paragraph 139, Google denies that it was aware of AdTrader's  
 25 contractual relationship with Dir.bg Group.

26 140. In response to paragraph 140, Google lacks sufficient knowledge or information to  
 27 admit or deny the allegations regarding AdTrader's relationship with Dir.bg Group, and on that basis  
 28 denies. The remainder of paragraph 140 consists entirely of Plaintiffs' legal arguments and

1 characterization of their allegations and does not require a response; to the extent a response is  
 2 required, Google denies all the allegations therein.

3 141. In response to paragraph 141, Google lacks sufficient knowledge or information to  
 4 admit or deny the allegations regarding AdTrader's relationship with Investor.bg Group, and on that  
 5 basis denies.

6 142. In response to paragraph 142, Google lacks sufficient knowledge or information to  
 7 admit or deny the allegations regarding AdTrader's relationship with Investor.bg Group, and on that  
 8 basis denies.

9 143. In response to paragraph 143, Google denies that it was aware of AdTrader's  
 10 contractual relationship with Investor.bg Group.

11 144. In response to paragraph 144, Google lacks sufficient knowledge or information to  
 12 admit or deny the allegations regarding AdTrader's relationship with Investor.bg Group, and on that  
 13 basis denies. The remainder of paragraph 144 consists entirely of Plaintiffs' legal arguments and  
 14 characterization of their allegations and does not require a response; to the extent a response is  
 15 required, Google denies all the allegations therein.

16 145. In response to paragraph 145, Google admits that AdTrader had been an AdX publisher  
 17 for nearly four years when it was terminated, but denies that Google had "extensively worked" with  
 18 AdTrader. The remainder of paragraph 145 consists entirely of Plaintiffs' legal arguments and  
 19 characterization of their allegations and does not require a response; to the extent a response is  
 20 required, Google denies all the allegations therein.

21 146. In response to paragraph 146, Google lacks sufficient knowledge or information to  
 22 admit or deny the allegations regarding the revenues AdTrader expected to receive from its publishing  
 23 clients, and on that basis denies. The remainder of paragraph consists of Plaintiffs' legal arguments  
 24 and characterization of their allegations and does not require a response; to the extent a response is  
 25 required, Google denies all the allegations therein.

26 147. Paragraph 147 consists entirely of Plaintiffs' legal arguments and characterization of  
 27 their allegations and does not require a response; to the extent a response is required, Google denies  
 28 all the allegations therein.

**FOURTH CAUSE OF ACTION:**  
**Declaratory Relief  
by AdTrader against Google  
(Individual Claim)**

148. In response to paragraph 148, Plaintiffs only reference paragraphs of the SAC in this paragraph, Google incorporates its responses to all the preceding paragraphs.

149. In response to paragraph 149, Google admits that this paragraph contains a partial quote from the AdX Publisher Agreement.

150. In response to paragraph 150, Google admits that it has asserted arguments in other matters based in part on portions of its publisher contracts limiting each party's liability to the other. The remainder of paragraph 150 consists of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

151. Paragraph 151 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

152. Paragraph 152 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

153. In response to paragraph 153, Google denies that has not experienced a material loss in revenue as a result of publishers' breaching its policies. Google admits that, based on its current knowledge after a reasonable investigation, it has never brought a lawsuit against an AdX publisher. The remainder of paragraph 153 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

154. In response to paragraph 154, Google admits that this paragraph contains a partial quote from the AdX publisher agreement. The remainder of paragraph 154 consists of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

155. Paragraph 155 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

156. Paragraph 156 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

## PLAINTIFFS' CLASS ACTION CLAIMS

**FIFTH CAUSE OF ACTION:**  
**Breach of Contract (DoubleClick Ad Exchange Agreement,  
DBM Agreement, and AdWords Agreement)**  
**by Plaintiffs against Google**  
**(Class Action Claim)**

157. In response to paragraph 157, Plaintiffs only reference paragraphs of the SAC in this paragraph, Google incorporates its responses to all the preceding paragraphs.

158. Paragraph 158 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein. Google denies that any class can be certified. Google notes that the Court dismissed this cause of action with prejudice in its April 22, 2019 Order to the extent it relied on clicks or impressions Google determined to be invalid before an advertiser was invoiced; to the extent all of the paragraphs in this cause of action rely on such allegations, no response is required.

159. Paragraph 159 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein. Google denies that any class can be certified.

160. In response to paragraph 160, Google admits that Plaintiff AdTrader and many others entered into the DoubleClick Ad Exchange Agreement. The remainder of paragraph 160 consists of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

161. In response to paragraph 161, Google admits that Plaintiffs AdTrader and SCB entered into the AdWords Agreement.

162. In response to paragraph 162, Google admits that AdTrader registered several sub-

1 accounts on behalf of its purported advertising clients. Google admits that these sub-accounts were  
 2 separately identified on AdTrader's AdWords invoices. Google denies that the sub-accounts were  
 3 separately identified on AdTrader's AdX invoices. Google admits that it is aware that advertising  
 4 agencies purchase ad space on behalf of third party advertisers. The remainder of paragraph 162  
 5 consists of Plaintiffs' legal arguments and characterization of their allegations and does not require a  
 6 response; to the extent a response is required, Google denies all the allegations therein

7 163. In response to paragraph 163, Google denies that AdTrader and all other members of  
 8 this putative class substantially performed their obligations to Google. The remainder of paragraph  
 9 163 consists of Plaintiffs' legal arguments and characterization of their allegations and does not require  
 10 a response; to the extent a response is required, Google denies all the allegations therein.

11 164. In response to paragraph 164, Google denies that AdTrader and all other members of  
 12 this putative class substantially performed their obligations to Google. The remainder of paragraph  
 13 164 consists of Plaintiffs' legal arguments and characterization of their allegations and does not require  
 14 a response; to the extent a response is required, Google denies all the allegations therein.

15 165. In response to paragraph 165, Google admits that this paragraph contains a partial  
 16 quotation from the DoubleClick Ad Exchange Agreement. Google lacks sufficient knowledge or  
 17 information to admit or deny the allegations regarding Plaintiffs' and all other members of this putative  
 18 class' understanding of Section 6 of the DoubleClick Ad Exchange Agreement and on that basis denies  
 19 the allegations. The remainder of paragraph 165 consists of Plaintiffs' legal arguments and  
 20 characterization of their allegations and does not require a response; to the extent a response is  
 21 required, Google denies all the allegations therein.

22 166. In response to paragraph 166, Google admits that this paragraph contains a partial  
 23 quotation from the AdWords Agreement. Google lacks sufficient knowledge or information to admit  
 24 or deny the allegations regarding Plaintiffs' and all other members of this putative class' understanding  
 25 of Section 7 of the AdWords Agreement and on that basis denies the allegations. The remainder of  
 26 paragraph 166 consists of Plaintiffs' legal arguments and characterization of their allegations and does  
 27 not require a response; to the extent a response is required, Google denies all the allegations therein.

1           167. In response to paragraph 167, Google lacks sufficient knowledge or information to  
 2 admit or deny all of allegations in paragraph 167, and on that basis denies.

3           168. In response to paragraph 168, Google admits that this paragraph contains a partial  
 4 quotation from one of Google's webpages. Google admits that the quoted words were likely written  
 5 and posted on Google's webpages before the start of the class period. Google lacks sufficient  
 6 knowledge or information to admit or deny the allegations regarding AdTrader's review of Google's  
 7 statements and understanding of Google's webpage and on that basis denies the allegations. The  
 8 remainder of paragraph 168 consists of Plaintiffs' legal arguments and characterization of their  
 9 allegations and does not require a response; to the extent a response is required, Google denies all the  
 10 allegations therein.

11           169. In response to paragraph 169, Google admits that this paragraph contains a partial  
 12 quotation from one of Google's webpages. Google denies that this quote was written and placed on  
 13 Google's webpages before the start of the Class Period. Google lacks sufficient knowledge or  
 14 information to admit or deny the remaining allegations in this paragraph regarding Plaintiffs'  
 15 understanding, and on that basis denies the remaining allegations.

16           170. In response to paragraph 170, Google admits that it has referred AdX advertisers to its  
 17 Ads Traffic Quality webpages for information regarding invalid ad activity. Google admits that some  
 18 of the Ads Traffic Quality pages reference or refer to AdX. Google lacks sufficient knowledge or  
 19 information to admit or deny the remaining allegations in paragraph 170 and on that basis denies the  
 20 remaining allegations.

21           171. In response to paragraph 171, Google admits that this paragraph contains a partial  
 22 quotation from one of Google's webpages. Google admits that the quoted words were likely written  
 23 and posted on Google's webpages before the start of the class period. Google lacks sufficient  
 24 knowledge or information to admit or deny the remaining allegations in paragraph 170, and on that  
 25 basis denies the remaining allegations.

26           172. In response to paragraph 172, Google admits that it maintains a webpage describing  
 27 different methods of detecting invalid ad activity including through the use of filters offline analysis,  
 28 and investigations and generally describes what these processes sometimes entail. The remainder of

1 paragraph 172 consists of Plaintiffs' legal arguments and characterization of their allegations and does  
 2 not require a response; to the extent a response is required, Google denies all the allegations therein.

3 173. In response to paragraph 173, which pertains to Plaintiffs' understanding, Google lacks  
 4 sufficient knowledge or information to admit or deny all the allegations therein, and on that basis  
 5 denies.

6 174. In response to paragraph 174, Google admits that this paragraph contains a partial  
 7 quotation from one of Google's webpages. Google lacks sufficient knowledge or information to admit  
 8 or deny the remaining allegations in this paragraph regarding Plaintiffs' understanding and Plaintiffs'  
 9 legal arguments regarding the terms of the various agreements, and on that basis denies the remaining  
 10 allegations.

11 175. In response to paragraph 175, Google admits that this paragraph contains a partial  
 12 quotation from one of Google's webpages. Google lacks sufficient knowledge or information to admit  
 13 or deny the remaining allegations in this paragraph regarding Plaintiffs' understanding and Plaintiffs'  
 14 legal arguments regarding the terms of the various agreements and on that basis denies the remaining  
 15 allegations.

16 176. In response to paragraph 176, Google admits that it sometimes uses various standard  
 17 form e-mails to inform publishers that their accounts are being terminated. Google admits that this  
 18 paragraph contains a partial quotation from one such form e-mail. Google denies Plaintiffs'  
 19 allegations regarding Google's contractual understanding. The remainder of paragraph 176 consists  
 20 of Plaintiffs' legal arguments and characterization of their allegations and does not require a response;  
 21 to the extent a response is required, Google denies all the allegations therein.

22 177. In response to paragraph 177, Google admits that one of its employees gave a statement  
 23 to The Register that is partially quoted in this paragraph.

24 178. In response to paragraph 178, Google denies that it provided no refunds to advertisers  
 25 for invalid activity where it had withheld earnings from the associated AdX publisher. The remainder  
 26 of paragraph 178 consists entirely of Plaintiffs' legal arguments and characterization of their  
 27 allegations and does not require a response; to the extent a response is required, Google denies all the  
 28 allegations therein.

1       179. In response to paragraph 179, Google denies that it provided no refunds to advertisers  
 2 for invalid activity where it had withheld earnings from the associated publisher. The remainder of  
 3 paragraph 179 consists entirely of Plaintiffs' legal arguments and characterization of their allegations  
 4 and does not require a response; to the extent a response is required, Google denies all the allegations  
 5 therein.

6       180. Paragraph 180 consists entirely of Plaintiffs' legal arguments and characterization of  
 7 their allegations and does not require a response; to the extent a response is required, Google denies  
 8 all the allegations therein.

9       181. Paragraph 181 consists entirely of Plaintiffs' legal arguments and characterization of  
 10 their allegations and does not require a response; to the extent a response is required, Google denies  
 11 all the allegations therein.

12       182. In response to paragraph 182, Google admits that Plaintiff AdTrader and many others,  
 13 including members of this putative class, entered into the DBM Agreement.

14       183. In response to paragraph 183, Google admits that sub-accounts purportedly related to  
 15 AdTrader's advertising clients were identified on AdTrader's DBM invoices. Google admits that it is  
 16 aware that advertising agencies purchase ad space on behalf of third party advertisers. The remainder  
 17 of paragraph 183 consists of Plaintiffs' legal arguments and characterization of their allegations and  
 18 does not require a response; to the extent a response is required, Google denies all the allegations  
 19 therein.

20       184. In response to paragraph 184, Google denies that AdTrader and all other members of  
 21 this putative class substantially performed their obligations to Google. The remainder of paragraph  
 22 184 consists of Plaintiffs' legal arguments and characterization of their allegations and does not require  
 23 a response; to the extent a response is required, Google denies all the allegations therein.

24       185. In response to paragraph 185, Google admits that this paragraph contains a partial  
 25 quotation from the DBM Agreement. Google lacks sufficient knowledge or information to admit or  
 26 deny the allegations regarding Plaintiffs' and all other members of this putative class' understanding  
 27 of Section 2 of the DBM Agreement and on that basis denies the allegations. The remainder of  
 28 paragraph 185 consists of Plaintiffs' legal arguments and characterization of their allegations and does

1 not require a response; to the extent a response is required, Google denies all the allegations therein.

2 186. In response to paragraph 186, Google admits that DBM process bids for ad buys across  
 3 multiple advertising exchanges. Google lacks sufficient knowledge or information to admit or deny  
 4 the allegations regarding Plaintiffs' understanding of the agreement and on that basis denies the  
 5 allegations. The remainder of paragraph 186 consists of Plaintiffs' legal arguments and  
 6 characterization of their allegations and does not require a response; to the extent a response is  
 7 required, Google denies all the allegations therein.

8 187. In response to paragraph 187, Google lacks sufficient knowledge or information to  
 9 admit or deny any of the allegations in paragraph 187, and on that basis denies the allegations.

10 188. In response to paragraph 188, Google admits that it uses proprietary methods to detect  
 11 invalid ad traffic on its own and third party ad networks. Google lacks sufficient knowledge or  
 12 information to admit or deny the remaining allegations in paragraph 188, and on that basis denies all  
 13 remaining the allegations.

14 189. In response to paragraph 189, Google lacks sufficient knowledge or information to  
 15 admit or deny the allegations regarding Plaintiffs' understanding of the DBM Agreement and on that  
 16 basis denies the allegations. The remainder of paragraph 189 consists of Plaintiffs' legal arguments  
 17 and characterization of their allegations and does not require a response; to the extent a response is  
 18 required, Google denies all the allegations therein.

19 190. In response to paragraph 190, Google denies that it provided no refunds to DBM  
 20 advertisers refunds or credits for invalid ad activity when it simultaneously did not pay publishers for  
 21 that invalid ad activity. The remainder of paragraph 190 consists entirely of Plaintiffs' legal arguments  
 22 and characterization of their allegations and does not require a response; to the extent a response is  
 23 required, Google denies all the allegations therein.

24 191. Paragraph 191 consists entirely of Plaintiffs' legal arguments and characterization of  
 25 their allegations and does not require a response; to the extent a response is required, Google denies  
 26 all the allegations therein.

27 192. In response to paragraph 192, Google denies that an advertiser using DBM cannot  
 28 purchase ad space on AdX unless they have also executed the DoubleClick Ad Exchange Agreement.

1 The remainder of paragraph 192 consists of Plaintiffs' legal arguments and characterization of their  
 2 allegations and does not require a response; to the extent a response is required, Google denies all the  
 3 allegations therein.

4 193. Paragraph 193 consists entirely of Plaintiffs' legal arguments and characterization of  
 5 their allegations and does not require a response; to the extent a response is required, Google denies  
 6 all the allegations therein.

7 194. In response to paragraph 194, Google denies that it provided no refunds to advertisers  
 8 for invalid activity when it simultaneously did not pay publishers for that invalid ad activity. The  
 9 remainder of paragraph 194 consists entirely of Plaintiffs' legal arguments and characterization of  
 10 their allegations and does not require a response; to the extent a response is required, Google denies  
 11 all the allegations therein.

12 195. Paragraph 195 consists entirely of Plaintiffs' legal arguments and characterization of  
 13 their allegations and does not require a response; to the extent a response is required, Google denies  
 14 all the allegations therein.

15 196. In response to paragraph 196, Google admits that this paragraph contains partial  
 16 quotations from the DoubleClick Ad Exchange Agreement and AdWords Agreement. Google admits  
 17 that it contended that the cite sections limit or precludes Plaintiffs' claims.

18 197. In response to paragraph 197, Google admits that the DBM agreement does not contain  
 19 the language quoted in paragraph 196. Google lacks sufficient knowledge or information to admit or  
 20 deny the allegations regarding Plaintiffs' and all other members of this putative class' understanding  
 21 of the DoubleClick Ad Exchange Agreement and AdWords agreement, and on that basis denies the  
 22 allegations. The remainder of paragraph 197 consists of Plaintiffs' legal arguments and  
 23 characterization of their allegations and does not require a response; to the extent a response is  
 24 required, Google denies all the allegations therein.

25 198. In response to paragraph 198, Google lacks sufficient knowledge or information to  
 26 admit or deny the allegations regarding Plaintiffs' and all online advertisers' knowledge of the risk of  
 27 invalid ad traffic and on that basis denies the allegations. The remainder of paragraph 198 consists of  
 28 Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to

1 the extent a response is required, Google denies all the allegations therein.

2 199. Paragraph 199 consists entirely of Plaintiffs' legal arguments and characterization of  
 3 their allegations and does not require a response; to the extent a response is required, Google denies  
 4 all the allegations therein.

5 200. Paragraph 200 consists entirely of Plaintiffs' legal arguments and characterization of  
 6 their allegations and does not require a response; to the extent a response is required, Google denies  
 7 all the allegations therein.

8 **SIXTH CAUSE OF ACTION:**  
 9 **Breach of the Implied Covenant of Good Faith and Fair Dealing (DoubleClick Ad Exchange  
 Agreement, DBM Agreement, and AdWords Agreement)**  
 10 **by Plaintiffs against Google  
 (Class Action Claim)**

11 201. In response to paragraph 201, as Plaintiffs refer to allegations in preceding paragraphs,  
 12 Google incorporates its responses to all the preceding paragraphs. The remainder of this paragraph  
 13 pertains to Plaintiffs' class-wide cause of action for breach of the implied covenant of good faith and  
 14 fair dealing which was dismissed with prejudice by the Court in its April 22 Order, such that no  
 15 response is required to all allegations in this cause of action; to the extent a response is required,  
 16 Google denies all allegations.

17 202. Paragraph 202 pertains to Plaintiffs' class-wide cause of action for breach of the  
 18 implied covenant of good faith and fair dealing which was dismissed with prejudice by the Court in  
 19 its April 22 Order, such that no response is required to all allegations in this cause of action; to the  
 20 extent a response is required, Google denies all allegations.

21 203. Paragraph 203 pertains to Plaintiffs' class-wide cause of action for breach of the  
 22 implied covenant of good faith and fair dealing which was dismissed with prejudice by the Court in  
 23 its April 22 Order, such that no response is required to all allegations in this cause of action; to the  
 24 extent a response is required, Google denies all allegations.

25 204. Paragraph 204 pertains to Plaintiffs' class-wide cause of action for breach of the  
 26 implied covenant of good faith and fair dealing which was dismissed with prejudice by the Court in  
 27 its April 22 Order, such that no response is required to all allegations in this cause of action; to the  
 28 extent a response is required, Google denies all allegations.

1           205. Paragraph 205 pertains to Plaintiffs' class-wide cause of action for breach of the  
 2 implied covenant of good faith and fair dealing which was dismissed with prejudice by the Court in  
 3 its April 22 Order, such that no response is required to all allegations in this cause of action; to the  
 4 extent a response is required, Google denies all allegations.

5           206. Paragraph 206 pertains to Plaintiffs' class-wide cause of action for breach of the  
 6 implied covenant of good faith and fair dealing which was dismissed with prejudice by the Court in  
 7 its April 22 Order, such that no response is required to all allegations in this cause of action; to the  
 8 extent a response is required, Google denies all allegations.

9           207. Paragraph 207 pertains to Plaintiffs' class-wide cause of action for breach of the  
 10 implied covenant of good faith and fair dealing which was dismissed with prejudice by the Court in  
 11 its April 22 Order, such that no response is required to all allegations in this cause of action; to the  
 12 extent a response is required, Google denies all allegations.

13           208. Paragraph 208 pertains to Plaintiffs' class-wide cause of action for breach of the  
 14 implied covenant of good faith and fair dealing which was dismissed with prejudice by the Court in  
 15 its April 22 Order, such that no response is required to all allegations in this cause of action; to the  
 16 extent a response is required, Google denies all allegations.

17           209. Paragraph 209 pertains to Plaintiffs' class-wide cause of action for breach of the  
 18 implied covenant of good faith and fair dealing which was dismissed with prejudice by the Court in  
 19 its April 22 Order, such that no response is required to all allegations in this cause of action; to the  
 20 extent a response is required, Google denies all allegations.

21           **SEVENTH CAUSE OF ACTION:**  
 22           **Breach of Implied Duty to Perform with Reasonable Care**  
 23           **(DoubleClick Ad Exchange Agreement and AdWords Agreement)**  
 24           **by Plaintiffs against Google**  
 25           **(Class Action Claim)**

26           210. In response to paragraph 210, as Plaintiffs refer to allegations in preceding paragraphs,  
 27 Google incorporates its responses to all the preceding paragraphs. The remainder of this paragraph  
 28 pertains to Plaintiffs' class-wide cause of action for breach of the implied duty to perform with  
 reasonable care which was dismissed with prejudice by the Court in its April 22 Order, such that no  
 response is required to all allegations in this cause of action; to the extent a response is required,

1 Google denies all allegations.

2 211. Paragraph 211 pertains to Plaintiffs' class-wide cause of action for breach of the  
 3 implied duty to perform with reasonable care which was dismissed with prejudice by the Court in its  
 4 April 22 Order, such that no response is required to all allegations in this cause of action; to the extent  
 5 a response is required, Google denies all allegations.

6 212. Paragraph 212 pertains to Plaintiffs' class-wide cause of action for breach of the  
 7 implied duty to perform with reasonable care which was dismissed with prejudice by the Court in its  
 8 April 22 Order, such that no response is required to all allegations in this cause of action; to the extent  
 9 a response is required, Google denies all allegations.

10 213. Paragraph 213 pertains to Plaintiffs' class-wide cause of action for breach of the  
 11 implied duty to perform with reasonable care which was dismissed with prejudice by the Court in its  
 12 April 22 Order, such that no response is required to all allegations in this cause of action; to the extent  
 13 a response is required, Google denies all allegations.

14 214. Paragraph 214 pertains to Plaintiffs' class-wide cause of action for breach of the  
 15 implied duty to perform with reasonable care which was dismissed with prejudice by the Court in its  
 16 April 22 Order, such that no response is required to all allegations in this cause of action; to the extent  
 17 a response is required, Google denies all allegations.

18 215. Paragraph 215 pertains to Plaintiffs' class-wide cause of action for breach of the  
 19 implied duty to perform with reasonable care which was dismissed with prejudice by the Court in its  
 20 April 22 Order, such that no response is required to all allegations in this cause of action; to the extent  
 21 a response is required, Google denies all allegations.

22 216. Paragraph 216 pertains to Plaintiffs' class-wide cause of action for breach of the  
 23 implied duty to perform with reasonable care which was dismissed with prejudice by the Court in its  
 24 April 22 Order, such that no response is required to all allegations in this cause of action; to the extent  
 25 a response is required, Google denies all allegations.

26 217. Paragraph 217 pertains to Plaintiffs' class-wide cause of action for breach of the  
 27 implied duty to perform with reasonable care which was dismissed with prejudice by the Court in its  
 28 April 22 Order, such that no response is required to all allegations in this cause of action; to the extent

1 a response is required, Google denies all allegations.

2 218. Paragraph 218 pertains to Plaintiffs' class-wide cause of action for breach of the  
 3 implied duty to perform with reasonable care which was dismissed with prejudice by the Court in its  
 4 April 22 Order, such that no response is required to all allegations in this cause of action; to the extent  
 5 a response is required, Google denies all allegations.

6 **EIGHTH CAUSE OF ACTION:**

7 **False Advertising Law**  
 by Plaintiffs against Google  
 (Class Action Claim)

8  
 9 219. In response to paragraph 219, as Plaintiffs only refer to allegations in preceding  
 10 paragraphs, Google incorporates its responses to all the preceding paragraphs.

11 220. Paragraph 200 consists entirely of Plaintiffs' legal arguments and characterization of  
 12 their allegations and does not require a response; to the extent a response is required, Google denies  
 13 all the allegations therein.

14 221. In response to paragraph 221, Google denies that it offered its advertising services to  
 15 consumers or the public.

16 222. In response to paragraph 222, Google admits that this paragraph contains partial  
 17 quotations from various Google webpages. The remainder of paragraph 222 consists of Plaintiffs'  
 18 legal arguments and characterization of their allegations and does not require a response; to the extent  
 19 a response is required, Google denies all the allegations therein.

20 223. In response to paragraph 223, Google denies that the identified statements were untrue  
 21 or misleading at the time they were made. The remainder of paragraph 223 consists of Plaintiffs' legal  
 22 arguments and characterization of their allegations and does not require a response; to the extent a  
 23 response is required, Google denies all the allegations therein.

24 224. In response to paragraph 224, Google admits that one of its employees gave a statement  
 25 to The Register that is partially quoted in this paragraph. Google denies that prior to December 2017  
 26 it was not providing any refunds to DBM advertisers for invalid ad traffic. The remainder of paragraph  
 27 224 consists of Plaintiffs' legal arguments and characterization of their allegations and does not require  
 28 a response; to the extent a response is required, Google denies all the allegations therein.

1           225. In response to paragraph 225, Google denies that the addition of an arbitration clause  
 2 to its advertising contracts was done in response to the August, 2017 Wall Street Journal article  
 3 reference in this paragraph. The remainder of paragraph 225 consists entirely of Plaintiffs' legal  
 4 arguments and characterization of their allegations and does not require a response; to the extent a  
 5 response is required, Google denies all the allegations therein.

6           226. Paragraph 226 consists entirely of Plaintiffs' legal arguments and characterization of  
 7 their allegations and does not require a response; to the extent a response is required, Google denies  
 8 all the allegations therein.

9           227. In response to paragraph 227, Google lacks sufficient knowledge or information to  
 10 admit or deny any of the allegations therein, and on that basis denies.

11          228. In response to paragraph 228, Google lacks sufficient knowledge or information to  
 12 admit or deny any of the allegations therein, and on that basis denies.

13          229. In response to paragraph 229, Google admits that it has owned AdWords, AdX, and  
 14 DBM for many years. Google denies that in 2015 and 2016 it was not providing refunds for ad activity  
 15 it subsequently determined to be invalid. The remainder of paragraph 229 consists of Plaintiffs' legal  
 16 arguments and characterization of their allegations and does not require a response; to the extent a  
 17 response is required, Google denies all the allegations therein.

18          230. Paragraph 230 consists entirely of Plaintiffs' legal arguments and characterization of  
 19 their allegations and does not require a response; to the extent a response is required, Google denies  
 20 all the allegations therein.

21          231. Paragraph 231 consists entirely of Plaintiffs' legal arguments and characterization of  
 22 their allegations and does not require a response; to the extent a response is required, Google denies  
 23 all the allegations therein.

24          232. In response to paragraph 232, Google admits that it authored the referenced contracts.  
 25 The remainder of paragraph 232 consists entirely of Plaintiffs' legal arguments and characterization  
 26 of their allegations and does not require a response; to the extent a response is required, Google denies  
 27 all the allegations therein.

28          233. In response to paragraph 233, Google denies that it provided no refunds or credits to

Plaintiffs for ad activity it subsequently determined was invalid. The remainder of paragraph 233 consists of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

234. In response to paragraph 234, Google lacks sufficient knowledge or information to admit or deny what on research firm estimated Google's advertising base to be, and on that basis denies the allegation. The remainder of paragraph 234 consists of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

235. Paragraph 235 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

236. In response to paragraph 236, Google lacks sufficient knowledge or information to admit or deny the allegations regarding how many employees various Plaintiffs have and on that basis denies those allegations. The remainder of paragraph 236 consists of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

237. Paragraph 237 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

**NINTH CAUSE OF ACTION:**  
**Unfair Competition Law**  
**by Plaintiffs against Google**  
**(Class Action Claim)**

238. In response to paragraph 238, as Plaintiffs only refer to allegations in preceding paragraphs, Google incorporates its responses to all the preceding paragraphs.

239. Paragraph 239 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

240. In response to paragraph 240, Google lacks sufficient knowledge or information to

1 admit or deny all of the allegations in this paragraph and on that basis denies.

2 241. Paragraph 241 consists entirely of Plaintiffs' legal arguments and characterization of  
 3 their allegations and does not require a response; to the extent a response is required, Google denies  
 4 all the allegations therein.

5 242. In response to paragraph 242, Google denies that it refused to provide full credits or  
 6 refunds to advertisers for invalid impressions or clicks on their ads. Google denies that it "kept all of  
 7 the money for itself." The remainder of paragraph 242 consists of Plaintiffs' legal arguments and  
 8 characterization of their allegations and does not require a response; to the extent a response is  
 9 required, Google denies all the allegations therein.

10 243. In response to paragraph 243, Google denies that it refuses to provide credits or refunds  
 11 to advertisers for invalid ad activity. Google denies that it "simply pockets the money." The remainder  
 12 of paragraph 243 consists of Plaintiffs' legal arguments and characterization of their allegations and  
 13 does not require a response; to the extent a response is required, Google denies all the allegations  
 14 therein.

15 244. In response to paragraph 244, Google lacks sufficient knowledge or information  
 16 regarding what Plaintiffs relied on, and on that basis denies the allegation. The remainder of paragraph  
 17 244 consists of Plaintiffs' legal arguments and characterization of their allegations and does not require  
 18 a response; to the extent a response is required, Google denies all the allegations therein.

19 245. In response to paragraph 245, Google lacks sufficient knowledge or information  
 20 regarding what Plaintiffs relied on, and on that basis denies the allegation. The remainder of paragraph  
 21 245 consists of Plaintiffs' legal arguments and characterization of their allegations and does not require  
 22 a response; to the extent a response is required, Google denies all the allegations therein.

23 246. Paragraph 246 consists entirely of Plaintiffs' legal arguments and characterization of  
 24 their allegations and does not require a response; to the extent a response is required, Google denies  
 25 all the allegations therein.

26 247. Paragraph 247 consists entirely of Plaintiffs' legal arguments and characterization of  
 27 their allegations and does not require a response; to the extent a response is required, Google denies  
 28 all the allegations therein.

248. Paragraph 248 consists entirely of Plaintiffs' legal arguments and characterization of their allegations and does not require a response; to the extent a response is required, Google denies all the allegations therein.

## **Prayer for Relief**

The paragraphs in the section entitled “Prayer for Relief” are Plaintiffs’ statement of requested relief to which no response is required.

## GOOGLE'S DEFENSES

Google asserts the following separate defenses to Plaintiffs' SAC, without assuming the burden of proof on such defenses that would otherwise fall on Plaintiffs. Google reserves the right to supplement or amend these defenses as discovery is conducted, and does not knowingly or intentionally waive any applicable affirmative defense.

## FIRST DEFENSE

## ARTICLE III STANDING

Plaintiffs have no standing to bring this action under Article III of the United States Constitution.

## **SECOND DEFENSE FAILURE TO STATE A CLAIM**

The SAC fails to state a claim upon which relief may be granted.

## THIRD DEFENSE

## CONSENT

This action is barred as a result of Plaintiffs' and putative class members' consent to Google's alleged actions.

## FOURTH DEFENSE PLAINTIFFS' BREACH

This action is barred as a result of Plaintiffs' and putative class members' breach of the AdX Publisher Agreement, the AdX Advertising Services Agreement, the AdWords Advertising Program Terms, and the DBM Advertising Platform Agreement, and advertising and publishing policies and terms incorporated therein (collectively, the "Terms").

## **FIFTH DEFENSE FAILURE TO SATISFY CONDITION PRECEDENT**

This action is barred as a result of Plaintiffs' and putative class members' failure to satisfy conditions precedent, as specified in the Terms.

## **SIXTH DEFENSE CONTRACTUAL LIMITATIONS**

This action is barred, in whole or in part, and Plaintiffs' damages, if any, are limited by the terms, definitions, exclusions, conditions, limitations, and endorsements contained in AdX Publisher Agreement, DoubleClick Ad Exchange Buyer Terms, the DoubleClick Advertising Platform Agreement, and Google Advertising Program Terms, including, but not limited to, the Limitation of Liability clause contained therein.

## SEVENTH DEFENSE CONTRACT INTEGRATION

This action is barred, in whole or in part, because, to the extent a contract was formed, the contract was intended to be the full agreement between the parties, and certain of the alleged promises by Google were not a part of the contract.

## **EIGHTH DEFENSE STATUTE OF LIMITATIONS**

This action is barred, in whole or in part, by the applicable statute of limitations.

## NINTH DEFENSE PROXIMATE CAUSE

The relief prayed for in the SAC cannot be granted because neither Plaintiffs nor any putative class member has sustained any loss, damage, harm, or detriment as a result of, or proximately caused by, any alleged acts, omissions, or other breach of duty by Google, and to the extent that Plaintiffs or any putative class member have sustained damage, if any, that damage resulted from the intervening and/or superseding acts of a third party.

## TENTH DEFENSE UNREASONABLE RELIANCE

Plaintiffs, and each and every putative class member, are not entitled to recover damages in this action because Plaintiffs and such putative class members unreasonably relied on purported statements, if any, made by Google.

## **ELEVENTH DEFENSE UNRECOVERABLE DAMAGES**

The claims in the SAC are barred, in whole or in part, because the damages alleged to have been suffered are not compensable under the law.

## **TWELFTH DEFENSE EQUITABLE DEFENSES**

Plaintiffs, and each and every putative class member, are barred from recovery, in whole or in part, by the doctrines of express and implied waiver, estoppel, unclean hands, election of remedies, and other applicable equitable doctrines.

## THIRTEENTH DEFENSE UNJUST ENRICHMENT

This action is barred, in whole or in part, to the extent Plaintiffs and any putative class member would be unjustly enriched if allowed to recover under the SAC.

# FOURTEENTH DEFENSE GOOD FAITH

Google has acted reasonably, in good faith, and with innocent intent with respect to the conduct alleged in the SAC.

## FIFTEENTH DEFENSE EXPRESS COVENANTS

Plaintiffs, and each and every member of the putative class, are barred from recovery, in whole or in part, to the extent the express covenants contained within the Terms are inconsistent with the implied covenant of good faith and fair dealing.

## SIXTEENTH DEFENSE COMPLETE REMEDY AT LAW

The claims in the SAC are barred because the injury or damage suffered by Plaintiffs and any putative class member, if any, would be adequately compensated in an action at law for damages. Accordingly, Plaintiffs, and each and every putative class member, have a complete and adequate remedy at law and are not entitled to seek equitable relief.

**SEVENTEENTH DEFENSE  
NO STANDING TO SEEK DECLARATORY RELIEF**

The claims for declaratory relief are barred, in whole or in part, to the extent Plaintiffs, and any putative class members, following the termination of their accounts, waived their rights under the Terms by failing to timely file an appeal.

## **EIGHTEENTH DEFENSE FAILURE TO SATISFY RULE 23**

This action is not suitable for class action treatment under Federal Rule of Civil Procedure 23.

# NINETEENTH DEFENSE LACHES

This action is not suitable for class action treatment under Federal Rule of Civil Procedure 23.

# **TWENTIETH DEFENSE JUSTIFICATION**

Google was justified in doing any and/or all of the acts alleged in the SAC.

# TWENTY FIRST DEFENSE PRIVILEGE

Google was privileged in doing any and/or all of the acts alleged in the complaint.

## **TWENTY SECOND DEFENSE ASSUMPTION OF RISK**

This action is barred as a result of Plaintiffs and putative class members' assumption of the risk of loss.

## **TWENTY THIRD DEFENSE FAILURE TO MITIGATE**

Plaintiffs and putative class members are barred from recovery in whole or in part based on their own unexcused failure to mitigate damages.

1 Dated: May 16, 2019

COOLEY LLP  
JEFFREY M. GUTKIN (216083)  
MICHAEL G. RHODES (116127)  
KYLE C. WONG (224021)  
AUDREY J. MOTT-SMITH (300550)

4

5

/s/ Jeffrey Gutkin

---

6 Jeffrey M. Gutkin (216083)  
7 Attorneys for Defendant  
8 GOOGLE LLC

9

10 203499132

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28